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Several discussions of recent constitutional developments in Germany have also appeared in the *Archiv des öffentlichen Rechts*. In Number 4, Volume 39 (1920), is an article entitled, "Kritische Vorberachtungen zur neuen Reichsverfassung," by Leo Mittmayer; and one on the new constitutions of Baden and Wurtemberg by Dr. Otto Koellreutter. In Number 1, Volume 40 (1921), is an analysis if the new Prussian constitution, by Robert Piloty. This calls attention to the new *Staatsrat* and the provisions for provincial and local autonomy as the outstanding features of the new instrument.

STERLING D. SPERO.

*Columbia University.*

**Swiss Treaty Initiative.** Since the referendum on the League of Nations of May 16, 1920, the most important question to be dealt with by the Swiss people was the initiative on treaties, accepted January 30 of this year. The initiative was presented in the form of an amendment to Article 89 of the federal constitution (the referendum article), and may be translated as follows:

"Treaties with foreign powers which are concluded without limit of time or for a period of more than fifteen years shall also be submitted to the people for acceptance or rejection upon demand of 30,000 Swiss citizens qualified to vote, or of eight cantons."

The effect of this amendment is to subject future treaties of the classes named to the optional referendum upon the same terms as ordinary federal legislation. For twelve years this question has been before the Swiss people. Disclosures made in 1909 regarding a secret transaction in connection with the St. Gothard treaty caused intense popular indignation.<sup>1</sup> Long before this, however, the Swiss had shown repeatedly that they possessed in more than ordinary measure the distrust democratic peoples are apt to feel regarding diplomatic procedure. Following the disclosures of 1909, initiative petitions were circulated in favor of the above constitutional amendment, receiving 64,391 signatures, nearly 15,000 more than were needed. Before a vote could be taken, however, the war broke out. Action on this, as well as on three other pending questions, was postponed to avoid the possible additional distraction of public opinion at a time when the country was already torn by questions arising out of the war.

When the embargo on this question was finally lifted during the

<sup>1</sup> Cf. Jesse Macy, "The Swiss as Teachers of Democracy," *Review of Reviews*, Vol. 47 (June, 1913), pp. 711-714.

latter part of 1920, the Swiss people took it calmly enough. Nothing like the interest manifested over the League of Nations, or even over such domestic questions as the nationalization of railroads, was aroused. In part, this was due to the virtually universal recognition that the proposal would be carried by a large majority. Earlier in the agitation the federal (executive) council had expressed itself energetically against the proposition, and as late as 1919 it contemplated bringing forward a counter proposal accompanied by a strong argument. In the end, however, the federal council and the two legislative bodies allowed the initiative to go before the people without opposition, although not without misgivings.

In discussions before the people arguments against the initiative proposal made a much greater showing than arguments for it. Occasional diplomatic errors, such as that committed in connection with the St. Gothard treaty, it was held, did not justify so drastic a change in the constitution. The possibility that future treaties might be haled before the people by referendum petition would cripple Swiss negotiators, and involve the whole treaty-making power of the country in doubt and discredit. Foreign powers interested in treaty decisions one way or another might attempt to influence the referendum vote of the country by intrigue, propaganda, or even by the use of corruption funds. It was further pointed out by the opponents of the proposal that a referendum vote by the people on a domestic question involved the power to decide that question definitively. A referendum vote on a treaty, however, involved action on a pending agreement affecting the interests not only of the Swiss people but of one or more other peoples. The latter might, not unnaturally, deeply resent unfavorable action by the Swiss electorate.

It was rather noteworthy that arguments against the treaty initiative seldom took the form of a denial of the ability of the people to pass on foreign relations, or of an assertion that the superior knowledge and ability of seasoned statesmen should alone be relied upon in this field. Quite obviously, the opposition was half-hearted and academic. Too many signs of the times indicated that it would carry by a large majority—that, rightly or wrongly, the Swiss people had decided to take a hand in treaty-making, just as they had decided long ago to take a hand in ordinary legislation.

On January 30 this forecast was realized, 388,365 voting for, to 158,668 voting against, the proposal.<sup>2</sup> It carried every canton except

<sup>2</sup> *Berner Bund*, January 31, 1921. The vote of several communes in Ticino had not been received at the time the above figures were printed. On the same

Uri and Thurgau. Once more, therefore, Switzerland is to experiment with democracy in a hitherto untried field. A certain leeway is allowed the executive and legislative bodies in dealing with treaties for not more than fifteen years. This would seem to offer an opportunity for evasion, particularly in the case of commercial treaties, which may readily be concluded for shorter periods. On the other hand, a government so cautious as that of Switzerland is not likely to go far in this direction against the will of a people so jealous, watchful and powerful. Of course a small nation, pledged to neutrality, can undertake such experiments with much greater likelihood of success than the people of a great power. The movement generated by the war in favor of open and democratic diplomacy assures an interest the world round in Switzerland's experience under this new amendment.

ROBERT C. BROOKS.

*Swarthmore College.*

day that the Swiss people voted "yes" by so overwhelming a majority on the treaty initiative, they voted "no" by an even greater majority on a purely domestic question, i.e., the military justice bill, submitted to them under the optional referendum. This bill, backed by Socialists and anti-militarists, proposed to substitute the varying codes of the twenty-five cantons for the uniform federal penal provisions in cases coming under military law. Soldiers guilty of violations were to be tried, not in the federal courts, but in the courts of the canton where the offence occurred. The opponents of the bill denounced it as a revolutionary attempt to break down all discipline in the army, and the country sustained them by a vote of 384,446 to 193,000. Now that the Swiss army system has been freed from this menace, it is generally conceded that the hardships imposed by the outworn penal law of 1851, will be removed by ordinary legislative processes.